

CANADA / JUDGMENT

Wheeldon v. Magee

2010 BCSC 491

COURT

Supreme Court of British Columbia

DECIDED

13 April 2010

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2010 BCSC 491 Wheeldon v. Magee IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Wheeldon v. Magee, 2010 BCSC 491 Date: 20100413 Docket: 05-2710 Registry: Victoria Between: Denise Lenore Wheeldon Plaintiff And: Christopher Magee Defendant Corrected Judgment: The text of the judgment was corrected at paragraphs 67, 97 and 105 on May 3, 2010. Before: Master Bouck Reasons for Judgment Counsel for Plaintiff: I.C. Morley Counsel for Defendant: H.F. Turnham Place and Date of Hearing: Additional evidence and submissions received: Victoria, B.C. February 19, 2010 March 16 and 19, 2010 Place and Date of Judgment: Victoria, B.C. April 13, 2010 The Appointment

- [1] This is an assessment of the parties' respective bills of costs following a nine day jury trial heard in February 2009.
- [2] Although judgment was rendered in favour of the plaintiff in February 2009, the issue of costs was the subject matter of further written submissions to the court. On July 31, 2010, the court gave oral reasons for judgment on that issue.
- [3] The order encapsulating both the jury's award and the costs order states as follows: THIS COURT ORDERS THAT:
1. The Defendant, Christopher Magee pay to the Plaintiff, Denise Lenore Wheeldon damages in the sum of \$60,700.00;
 2. The Plaintiff, Denise Lenore Wheeldon recover her costs of the action on Scale B up to January 30, 2009 from the Defendant, Christopher Magee;
 3. The Defendant, Christopher Magee recover his costs of the action after January 30, 2009 from the Plaintiff Denise Lenore Wheeldon;
 4. There be a set-off of costs against damages as required;
 5. There be no costs of the application on July 31, 2009 to either party.
- [4] At issue in this assessment are certain tariff items in the respective bills of costs, and in particular, the parties' costs associated with preparation for trial.

- [5] The defendant also takes issue with the necessity, propriety and reasonableness of the charges claimed by the plaintiff for the evidence of two of her experts: Associated Economic Consultants Ltd. and Vocational Consulting Group. The plaintiff challenges the claim for costs associated with defence counsel attending a pre-trial instructing meeting in Vancouver.

Background

- [6] At trial, the plaintiff claimed damages resulting from injuries sustained in a June 2004 motor vehicle accident. The claim included compensation for past and future income loss as well the cost of future care. Ms. Wheeldon did not return to her pre-accident work and was undergoing retraining at the time of trial.
- [7] Although the plaintiff retained Mr. Morley shortly after the accident, a writ was not issued until May 30, 2005. A statement of defence was filed on September 15, 2005, denying each and every allegation of fact in the statement of claim. However, that pleading was subsequently amended to admit the defendant's liability for the accident itself. The defendant maintained his denial that the plaintiff suffered any injuries in the accident. Alternatively, the defendant alleged that the plaintiff was contributorily negligent in the causation of those injuries.
- [8] The statement of claim was amended on one occasion to add a claim of loss of ability to perform household tasks and loss of investment income.
- [9] On January 11, 2006, the defendant filed a notice requiring trial by jury.
- [10] The trial was originally scheduled for October 16, 2006, but subsequently adjourned by consent to October 29, 2007. On October 15, 2007, the trial was again adjourned by consent, this time to commence on February 9, 2009. The parties' estimate of time to complete the trial had increased from five to ten days.
- [11] On November 1, 2007, the plaintiff was ordered to attend an independent medical examination. An appeal was taken from that order; it appears that this process was subsequently abandoned.
- [12] The parties attended at mediation on November 24, 2008. Just prior to the mediation, the defence made what Mr. Turnham characterizes as a fair offer to settle the claim. That offer was obviously not accepted by the plaintiff.
- [13] A formal Offer to Settle pursuant to Rule 37B was delivered by the defendant to the plaintiff on January 30, 2009. As may be apparent by the terms of the costs order, the offer exceeded the jury's award to the plaintiff.

- [14] Following the jury's verdict, the court directed the parties to provide written submissions on the issue of costs. In those submissions, the defendant argued that the plaintiff should be denied any preparation costs relating to the trial. The trial judge rejected this submission in making her July 31st order.
- [15] The trial judge also rejected the defendant's submission that the plaintiff's costs in connection with Associated Economic Consultants Ltd. and Vocational Consulting Group be disallowed in their entirety.
- [16] The transcript of the oral reasons was not presented during the assessment, nor is a copy of those reasons contained in the court file.
- [17] Following delivery of the oral reasons on costs, the parties sought clarification from the trial judge as to whether the defendant was entitled to costs for preparation for trial.
- [18] The final word from the trial judge came in the form of a memorandum issued September 11, 2009. In that memorandum, the court states that: In my view, the disposition proposed by Mr. Turnham captures the intent of the reasons. The reasons were responsive to the matters placed in issue in submissions. Accordingly, the reasons deal directly with the defendant's submission that the plaintiff should not recover any units for preparation for trial. I recall no submission with respect to units for trial preparation in relation to the defendant's costs and intended to make no order in relation to that issue. I did not intend paragraph 24 of the reasons to deny the defendant units for trial preparation and do not believe that the paragraph has that meaning.
- [19] To their credit, counsel had discussions regarding their respective bills prior to the commencement of the assessment. However, the particulars of the defendant's objections to the experts' fees may not have been fully articulated. Accordingly, I allowed the plaintiff to provide additional evidence, in particular detailed invoices from the experts in question as well as copies of the reports tendered at trial. The Principles to be applied
- [20] The assessment of party/party costs is an objective exercise.
- [21] With respect to the tariff items, where the minimum number of units are provided for an item, the assessing officer must consider this question: "How much time, on a scale of 1 to X (where X is the maximum units the tariff provides) should a reasonably competent lawyer have spent on the work for which the costs are claimed?": See Practice Before the Registrar (CLE) at p. 2-22.
- [22] Although the assessing officer must consider the nature of the proceeding, issues such as complexity or difficulty are matters to be determined by the court in fixing the appropriate scale of those costs. Furthermore, in most cases, the time records of counsel are of limited assistance as these provide only a subjective measure of the time reasonably spent.
- [23] The assessment of disbursements is governed by Rule 57(4):

- (4) In addition to determining the fees that are to be allowed on an assessment under subrule (1) or (3), the registrar must
- (a) determine which expenses and disbursements have been necessarily or properly incurred in the conduct of the proceeding, and
 - (b) allow a reasonable amount for those expenses and disbursements.
- [24] It is trite law that where a disbursement is in issue, an affidavit of justification is an indispensable requirement.
- [25] With respect to fees charged by experts, the assessing officer may rely on experience in determining whether the charges of those experts are reasonable in the circumstances: *Hamo v. Khan*, 2010 BCSC 205. However, the best evidence to present to the assessing officer will include detailed invoices showing the hours spent by the expert and that individual's hourly rate. This evidence should come directly from the expert who may then be subject to cross-examination on the affidavit's contents. It is often helpful to have evidence of comparable charges applied in the expert's area of expertise.
- [26] Experts' charges may be disallowed or reduced for a variety of reasons, including when: · the cost is unreasonable, compared to the evidence of other similar experts; · the expert's report includes, improperly, extensive narrative; and · when the suggested damages reported by the expert are "preposterous" in the view of the court. [Emphasis added.] *Bell v. Fantini* (No. 2) (1981), 32 B.C.L.R. 322 (S.C.) (see also *Leverman v. Prince George (City)*, 2000 BCSC 697 for a synopsis of this decision)
- [27] With respect to the necessity and propriety of a report, the assessing officer is not to "step into the shoes of the trier of fact" but rather must focus "on whether in the circumstances, it was a proper expenditure to fully and properly prepare the case for trial": *Freaker v. Wilson*, 2000 BCSC 695; *Morrisette v. Smith* (1990), 39 C.P.C. (2d) 30. I observe that in this case, the trial judge has already rejected the suggestion that the impugned charges of the experts be disallowed in their entirety based on the jury's verdict.
- [28] Nonetheless, an expert's charges will be significantly discounted if not disallowed in their entirety if their evidence is "nothing more than counsel could have done in argument": *Moore v. Dhillon*, [1992] B.C.J. No. 3055.
- [29] One further principle is applicable to the issues in this assessment: In the law of costs, convenience -- that which is beyond necessity and propriety -- is luxury. And luxury must be paid for from the pocket of the indulging party: *Hall (Guardian ad litem of) v. Strocel*, [1983] B.C.J. No. 506. The Plaintiff's Bill of Costs
- [30] As a general observation, the plaintiff has claimed the maximum number of units for many of the tariff items. However, in submissions, Mr. Morley conceded that in some instances the maximum may not be appropriate.

- [31] I will now deal with each of the disputed items. Item 1A. Correspondence, conferences, instructions, investigations or negotiations by a party until the commencement of the proceeding, for which provision is not made elsewhere in this tariff.
- [32] Mr. Morley was retained in or about June 2004. As noted, a writ was issued one year later. During this pre-writ period, Mr. Morley conducted investigations and took instructions from his client regarding both details of the accident and the plaintiff's health complaints. Time was also spent negotiating with the plaintiff's insurer concerning the value of Ms. Wheeldon's vehicle as well as the plaintiff's entitlement to physiotherapy, other medical care and wage loss indemnification pursuant to Part 7 of the regulations to the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231.
- [33] As submitted by the defence, the work described appears more relevant to Ms. Wheeldon's claim for Part 7 benefits rather than the substantive tort action.
- [34] I agree with the defendant's submission that 4 units is appropriate for this item. Item 1B. Correspondence, conferences, instructions, investigations or negotiations by a party after the commencement of the proceeding to the completion of the trial or hearing, for which provision is not made elsewhere in this tariff.
- [35] The defence submits that 15 units is appropriate for the work performed between the issuance of the writ on May 30, 2005, and the date on which the Offer to Settle was delivered, namely, January 30, 2009.
- [36] The work undertaken by the plaintiff's counsel during this period would include investigations revolving Ms. Wheeldon's medical condition, the income loss claim and claim for future care costs.
- [37] Based on the information before me, I conclude that 18 units is appropriate for the work performed during this period. Item 3. All process, for which provision is not made elsewhere in this tariff, for commencing and prosecuting a proceeding.
- [38] "Process" is defined in s. 1 of Appendix B as: The drawing, filing, service or delivery of a document and any amendment to it or particulars of it, but does not include an application with respect to the process or any part of the process.
- [39] In this case, the plaintiff's initial pleading is typical of a personal injury claim. Very little time should have been taken in drafting the pleading. The subsequent amendment to the statement of claim is minor in nature.
- [40] I allow 4 units for this item. Item 13A. All process and correspondence associated with retaining and consulting all experts for the purposes of obtaining opinions for use in the proceedings.

- [41] The medical experts supporting the plaintiff's claim included two general practitioners, two psychiatrists and a number of therapists. In addition, the plaintiff retained an economist and a vocational consultant to address the income loss and future care cost claims.
- [42] The plaintiff has claimed the maximum number of units for this item.
- [43] Only one of the plaintiff's general practitioners prepared a medical/legal letter. With respect to the psychiatrists, the defence argues that the medical/legal reports prepared by these individuals were merely restructuring of earlier consult (or Medical Services Plan) reports and required little instruction or communication from plaintiff's counsel. The defence concedes that the plaintiff would be required to instruct both the vocational consultant and the economist, although argues that in fact the conferences and instructions would be minimal.
- [44] Furthermore, the defence submits that no units should be allowed in this category for any work undertaken in preparing an expert for trial.
- [45] I agree with the defendant's submissions on this last point. Item 13A speaks only to retaining and consulting experts for the purposes of obtaining opinions. Any preparation for trial of those experts would be included either in item 1B or item 24. In this case, I have made an allowance for such preparation in item 1B.
- [46] Accordingly, the appropriate number of units to be allowed for consulting and retaining the experts is 5 units. Items 16 and 17. Application for further IME
- [47] The plaintiff initially claimed for a full day's hearing with respect to this application. However, it was conceded that the application was completed in one-half of a day. Accordingly, the units claimed have been reduced by one-half. Item 24. Preparation for trial
- [48] The plaintiff has claimed 5 units for each day of trial, for a total of 45 units. The defendant submits that the plaintiff is entitled to only five units on the authority of *Ebrahimi v. Stevenson*, 2006 BCSC 983.
- [49] *Ebrahimi v. Stevenson* is an appeal from a registrar's decision. One of the issues on appeal was whether the plaintiff was entitled to 5 units for each estimated day of trial in a matter that settled before that trial commenced.
- [50] *Groberman J.* (as he then was) refers to three earlier decisions of the court which address the same issue: *Clark v. Magdanz*, [1994] B.C.J. No. 3243; *Wong v. Leung* (1998), 20 C.P.C. (4th) 159; and *Tudge v. Koo*, [1998] B.C.J. No. 2937.
- [51] All three of those decisions considered the application of s. 4(4) of Appendix B which provides as follows: Where in the tariff units may be allowed for preparation of an activity, the registrar may allow units for preparation for an activity that does not take place or is adjourned up to the maximum allowable for one day. [Emphasis added.]

- [52] Obviously, in this case, the trial did take place. However, the defence argues that by virtue of the Offer to Settle and the court's award of costs, the assessing officer should determine item 24 as if the trial did not proceed. Accordingly, it would be wrong to allow the plaintiff more than one day's preparation time.
- [53] In addressing this particular item, both counsel referred to their time records showing what trial preparation took place both before and after January 30, 2009.
- [54] According to Mr. Morley's records, 43.9 hours were spent in preparation up to January 30, and 23.6 hours were spent in preparation during the course of the trial. Mr. Morley submits that because the bulk of work was conducted before the Offer to Settle was delivered, the plaintiff is entitled to the full units for preparation.
- [55] While I agree (and indeed am bound by) the principles discussed in *Ebrahimi v. Stevenson*, I find that the decision is not determinative in this particular proceeding. This is not a case where the matter settled before trial.
- [56] Other authorities suggest that the costs for preparation for trial can be apportioned based on the timing of the delivery of an Offer to Settle.
- [57] In *Anderson v. Routbard*, 2007 BCCA 193, the court considered both the validity of an Offer to Settle made in a Rule 66 action and the appropriate award of costs if the Offer was found to be valid.
- [58] In its analysis, the court was required to consider how costs related to preparation for trial should be assessed in circumstances where an Offer to Settle was delivered and that offer was greater than what the plaintiff recovered at trial. The court refers to two trial decisions in which this same issue was discussed: *Linekar v. Andreiko*, [2004] B.C.J. No. 740; *Duong v. Howarth*, 2005 BCSC 128.
- [59] At para. 49 of the decision, the court takes a formulaic approach to determining those costs:
- [49] ... In this case, however, the offer was delivered much earlier in the proceedings (19 months prior to trial, as compared with ten days prior to trial) at a time when it appears the only pre-trial work which had been done was the filing of pleadings. By far, the greatest portion of the legal preparation was done following the offer to settle. In these circumstances, I would exercise my discretion to award the defendant double costs for the entire period ($\$4,800 \times 2 = \$9,600$) less a 10% discount for work done prior to the offer to settle. ... While this estimate of costs is somewhat arbitrary, it avoids the need for taxation, as envisioned by subrule 66(29), and gives significant credit to the defendant for making an early offer to settle, in accordance with Rule 37.
- [60] For further examples of an apportionment or pro rata approach to the assessment of trial preparation costs see *Bowen v. Martinec*, 2008 BCSC 104; *Cathcart v. Olson*, 2009 BCSC 618.

- [61] Although this is not a Rule 66 action which stipulates a lump sum award of costs, I see no reason why the same formulaic approach should not be used in determining the trial preparation costs in this proceeding.
- [62] Indeed, the court's order left open the possibility of the apportionment of such costs.
- [63] The order for costs in this action was made under Rule 37B. This Rule provides for a variety of options to the court when considering the consequences of an Offer to Settle. Those options are as follows: Rule 37B
- (5) In a proceeding in which an offer to settle has been made, the court may do one or more of the following:
- (a) deprive a party, in whole or in part, of any or all of the costs, including any or all of the disbursements, to which the party would otherwise be entitled in respect of all or some of the steps taken in the proceeding after the date of delivery of the offer to settle;
 - (b) award double costs of all or some of the steps taken in the proceeding after the date of delivery of the offer to settle.
 - (c) award to a party, in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle, costs to which the party would have been entitled had the offer not been made;
 - (d) if the offer was made by a defendant and the judgment awarded to the plaintiff was no greater than the amount of the offer to settle, award to the defendant the defendant's costs in respect of all or some of the steps taken in the proceeding after the date of delivery of the offer to settle.
- [64] Here, the order is silent as to whether either the defendant or the plaintiff is entitled (or disentitled) to costs for certain steps. Indeed, the parties acknowledge that the court was presented with arguments which would result in a denial of costs for the opposite party for certain steps taken in the proceeding, including trial preparation. The court declined to make any specific order in that regard.
- [65] Applying a formulaic or percentage approach to the evidence before me, the time spent by Mr. Morley in preparation for trial can be divided between pre and post January 30, 2009.
- [66] It is not surprising that the majority of the time was spent by plaintiff's counsel prior to January 30. Contrary to the submissions of the defence, it is my experience that the majority of a plaintiff's preparation time is typically incurred before the trial commences; that is because the onus lies with the plaintiff to prove his or her case. All of the evidence necessary to prove the case must (or should) be ready in advance of trial. The defence, being in a reactive position, would be more likely engaged in day to day preparation throughout the course of the trial.

- [67] The total time spent by Mr. Morley in preparation for trial is 67.5 hours. Sixty-five percent of this time was spent before January 30, 2009. Thus, the plaintiff should be entitled to 65 percent of the nine days (45 units) available to her for preparation, but for the delivery of Offer to Settle. The resulting calculation is 29.5 units. Item 34A. Attendance at mediation, per day.
- [68] The defendant argues that since the plaintiff turned down a good offer prior to the mediation, she is not entitled to any units for this item. Nor should Ms. Wheeldon be reimbursed for the charges of the mediator. Mr. Turnham submits that the attendance at the mediation was entirely unnecessary as the offer could and should have been accepted.
- [69] I am unable to agree with that proposition.
- [70] Rule 37B sets out the process for delivering an Offer to Settle and the attendant consequences of failing to accept such an Offer. There is no provision in the Rules or any statute that allows an assessing officer to consider the consequences of an offer presented outside that Rule (except in relation to a costs assessment).
- [71] Indeed, a denial of costs due to the plaintiff's refusal to accept a reasonable offer is within the purview of the trial judge, not the assessing officer.
- [72] Accordingly, I allow the 5 units claimed for item 34A. The Mediator's charges are also allowed. Disbursements A. Vocational Consulting Group
- [73] The disbursement claimed for this expert is \$3,230. According to the invoice presented, the charges are broken down as follows: PROFESSIONAL SERVICES
- Review Supplied Documentation (3.0 hrs)
 - History Taking Interview (1.4 hrs)
 - Interpretation of Vocational Test Battery (1.5 hrs)
 - Development of Pre-injury Vocational Profile (1.5 hrs)
 - Development of Residual Employability Profile (1.5 hrs)
 - Case Research (1.0 hr)
 - Report Preparation (5.0 hrs) TOTAL CONSULTANT HOURS: 15 hrs x 195.00 = \$2,925.00
- TECHNICAL SUPPORT SERVICES
- Administration and Scoring of Vocational Test Battery TOTAL TECHNICAL HOURS: 3 x 90.00 = \$ 270.00
- DISBURSEMENTS
- Computerized Test Scoring \$ 35.00 Subtotal: \$3,230.00
- [74] There is no justification offered for the hourly rates charged by either the consultant or the technical support services.

- [75] The report prepared by Vocational Consulting Group consists of 11 pages. Two passages in the report were redacted by the trial judge upon the defendant's application. The passages were not identified at the assessment.
- [76] The defendant submits that the charge should be substantially reduced for a variety of reasons, including that the claim which this report supported (loss of earning capacity) was rejected entirely by the jury.
- [77] In addition, the defendant submits that the evidence presented by the plaintiff does not justify the reasonableness of the charges.
- [78] I am satisfied that it was both necessary and proper to retain this expert to address the plaintiff's diminished earning capacity claim. I am supported in that conclusion by the fact that the trial judge declined to disallow this disbursement despite the jury's verdict.
- [79] In terms of reasonableness, I am compelled to rely primarily on experience of similar charges. There are no comparable charges claimed by the defence in this action. Again, the onus is on the plaintiff to justify the charge.
- [80] The reasonableness of the charges from Vocational Consulting Group has been discussed in other assessments. In *Reap v. Insurance Corporation of British Columbia* [2000] B.C.J. 2258, the court reduced this expert's charges from \$3,000 to \$2,000 upon considering the content of the expert's report as well as the reasonableness of the hourly rate charged by the report's author. However, in *Hazbawi v. Lucier*, 2001 BCSC 844, the registrar determined that a fee of \$3,895 (and the expert's hourly rate of \$150) to be entirely reasonable. In other assessments, the charges of another vocational expert have been presented and allowed at a much less amount: *McCreight v. Currie*, [2007] B.C.J. No. 2939.
- [81] This apparent discrepancy in the amount allowed for such an expert's evidence highlights the need to consider the contents and purpose of the particular report.
- [82] At 11 pages, the report is relatively brief. The content includes a recitation of the plaintiff's circumstances; a synopsis of the medical information; a one page summary of the vocational test battery; and two pages of discussion. In the discussion, the author relies on easily accessible census data regarding the plaintiff's employment prospects. Little information was available on the potential employment opportunities flowing from the specific retraining undertaken by the plaintiff.
- [83] The author of the report concludes that: · Upon completion of the retraining, Ms. Wheeldon would have the potential to match her pre-injury earning potential; · However, Ms. Wheeldon will have lost the capability of returning to her pre-accident employment (based on the medical information reviewed), thus resulting in a loss of potential employment opportunities and an increased risk of periods of unemployment; and · The income available that might have been available to Ms. Wheeldon while pursuing the retraining is lost and will not be recouped by future earnings.

- [84] I was not told which two passages of the report were redacted by the trial judge, but it appears to me that the latter two conclusions are, in fact, a matter of argument rather than an opinion based on the author's expertise. That raises the question of whether the time spent in both researching and preparing the report is justified. In my view, the evidence presented does not provide such justification.
- [85] Nonetheless, other aspects of the report and resulting charges have been justified by reference to the invoice and report itself. In the result, this charge is allowed at \$2,700 (plus applicable taxes). B. Associated Economic Consultants
- [86] The plaintiff claims indemnification for the following charges related to this expert: · \$475 for a report addressing cost of future care and tax gross-up assumptions · \$5,495 for a report addressing loss of past and future wages and benefits
- [87] The defence takes similar objections to the charges claimed for this expert: the claims which are the subject matter of these reports were rejected by the jury; and the evidence presented by the plaintiff to justify these charges as reasonable is insufficient. It is submitted that the sum of \$3,000 is a fair charge for all of the work performed by this expert.
- [88] I find that the charges for the future care and tax-gross up report have been justified. Again, the assessing officer is not to disallow this charge simply because the claim was rejected by the jury. Based on the plaintiff's overall claim, it was reasonable to retain an economist to address these issues.
- [89] The charges relating to the second more substantial report is another matter. As noted, the report deals with three distinct issues. The expert has provided a more detailed invoice showing the time spent with respect to each particular issue and details of the work performed. The invoice notes that the plaintiff was not charged for all of the work performed, such as revisions to the report and a telephone conference with plaintiff's counsel.
- [90] As with the vocational assessor's charges, there are no comparable charges incurred by the defendant. However, in my experience, the charges are higher than what might be expected for the necessary work involved.
- [91] A significant portion of the work performed in addressing the past wage loss claim is more appropriately work done by counsel. For example, the economist has created tables which review the plaintiff's past reported earnings. A table shows the plaintiff's T4 earnings, the taxable benefits, average annual hourly wage and average annual hours of pay for the years 2000 to 2004. Another table created by this expert shows the estimates of past earnings from the accident date to the trial date, excluding employer paid benefits. All of these tables are simply arithmetic calculations based on the source data provided by the plaintiff. As such, the expertise of an economist is not required.

- [92] The second part of the report addresses the plaintiff's loss of future earnings claim. The economist provides present day multipliers to assist in quantifying this loss. A table is then produced "intended only to provide general examples of the use of multipliers" (the author's emphasis). The expertise of an economist might be required to provide the multiplier for use by the trier of fact. However, it is my experience that the examples used in the report are standard fare in any economist's report addressing future loss. As such, the creation of this information does not require the significant use of the expert's time or expertise as might be suggested in the overall charges presented.
- [93] In those circumstances, a reduction of the charges presented is warranted: *Letroy v. Fillo*, [1996] B.C.J. No. 472; *Moore v. Dhillon*, *supra*.
- [94] As an aside, I do not wish to suggest that this expert has improperly inflated the impugned charges. The author of the report has merely billed for the work that it was instructed to perform.
- [95] The portion of the report addressing the plaintiff's loss of pension and other benefits is indeed within the purview of an economist's expertise. No issue should be taken with charges related to that aspect of the report.
- [96] Considering the second report as a whole, I find that \$3,000 is a reasonable charge for the necessary and proper work performed by this expert.
- [97] In summary, the following costs are allowed to the plaintiff: Fees CLAIMED ALLOWED Total
Units Claimed: 153 units x \$110 = \$16,830.00 106.25 units x \$110 = \$11,687.50 Plus Goods & Services Tax of 5%: 841.50 584.37 Plus Provincial Tax of 7%: 1,178.10 818.12 Subtotal: 18,849.60 13,089.99 Disbursements: 13,666.62 10,691.62 Plus Goods & Services Tax: 647.74
Plus Goods & Services Tax on \$8,026.71 only 401.33 Subtotal: 14,314.36 11,092.95 TOTAL
FEES & DISBURSEMENTS: \$33,163.96 \$24,182.94 The Defendant's Bill of Costs
- [98] As with the plaintiff's bill, the main issue between the parties is the defendant's entitlement to units for item 24. The defendant has claimed 45 units, or five units for each day of trial.
- [99] Mr. Turnham says that the majority of his preparation occurred during the trial. The plaintiff submits that the defendant's claim should be reduced by one-half to reflect the fact that some preparation for trial must have occurred before January 30, 2009.
- [100] There is no need to take a formulaic approach in determining the defendant's trial preparation costs. The court has awarded the defendant his costs incurred after January 30, 2009. The evidence supports the fact that after January 30th, counsel prepared for all nine days of trial. The claim for 45 units is allowed.
- [101] The other item in dispute on this bill is the expense associated with the attendance of counsel at a pre-trial meeting in Vancouver with the defendant's insurer. Both Mr. Turnham and his co-counsel, John Waddell, Q.C., attended this meeting.

- [102] Mr. Turnham explained that such a meeting is policy initiative on the part of the defendant's insurer.
- [103] The cost associated with the attendance of both Mr. Turnham and Mr. Waddell at the meeting is some \$556.
- [104] It is entirely necessary and proper for counsel to consult with the de facto client in advance of trial. However, I find that travel by counsel to attend the client's offices in another city to be unnecessary in this case. There is no suggestion that instructions could not have been provided via a conference call. The cost of the attendance of one, let alone two, counsel is a luxury to the defence that the plaintiff should not be required to pay. Accordingly, I disallow the charge of \$556.
- [105] In the result, the defendant's costs are allowed as follows: Fees CLAIMED ALLOWED Total Units Claimed: 139 units x \$110 = \$15,290.00 139 units x \$110 = \$15,290.00 Plus Goods & Services Tax of 5%: 764.50 764.50 Plus Provincial Tax of 7%: 1,070.30 1,070.30 Subtotal: 17,124.80 17,124.80 Disbursements: 11,667.64 11,111.64 Plus Goods & Services Tax: \$2,349.25 x 5% = : 117.46 Plus Goods & Services Tax: \$1,793.26 x 5% = 89.66 Subtotal: 11,785.10 11,201.30 TOTAL FEES & DISBURSEMENTS: \$28,909.90 \$28,326.10 Summary
1. The plaintiff's costs are allowed at \$24,182.94.
 2. The defendant's costs are allowed at \$28,326.10.
- [106] Since the court has ordered a set-off of costs against the damages payable by the defendant, the plaintiff may wish to provide a separate certificate of costs. The certificate appended to the defendant's bill has been endorsed in the amount of \$28,326.10. "C. P. Bouck" Master C. P. Bouck

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